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5 IN THE UNITED STATES DISTRICT COURT
6 FOR THE NORTHERN DISTRICT OF CALIFORNIA
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8 IN RE: TFT-LCD (FLAT PANEL) ANTITRUST
9 LITIGATION

No. M 07-1827 SI

MDL. No. 1827

10 This Order Relates to:

11 ALL CASES
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**ORDER GRANTING APPLE INC.'S
ADMINISTRATIVE MOTION FOR
ENLARGEMENT OF TIME TO FILE A
REQUEST FOR EXCLUSION FROM
SETTLEMENT**

15 On February 17, 2011, the Court held a hearing on Apple Inc.'s motion to clarify its request for
16 exclusion from the settlement classes, or in the alternative, for an enlargement of time to request
17 exclusion from settlement classes.

18 Pursuant to Federal Rule of Civil Procedure 6(b)(1)(B), the Court has discretion to extend a
19 deadline upon a showing of good cause and excusable neglect. *See* Fed. R. Civ. Proc. 6(b)(1)(B); *Silver*
20 *v. Mabon*, 18 F.3d 1449, 1455 (9th Cir. 1994). In *Pioneer Investment Services Company v. Brunswick*
21 *Associates Limited Partnership*, 507 U.S. 380 (1993), the Supreme Court held that courts could, where
22 appropriate, "accept late filings caused by inadvertence, mistake, or carelessness, as well as by
23 intervening circumstances beyond the party's control." *Id.* at 388. The court established a four part
24 balancing test for determining whether there is excusable neglect: (1) the danger of prejudice to the
25 nonmoving party, (2) the length of delay, (3) the reason for the delay, including whether it was within
26 the reasonable control of the movant, and (4) whether the moving party's conduct was in good faith.
27 *Pincay v. Andrews*, 389 F.3d 853, 855 (9th Cir. 2004) (en banc) (citing *Pioneer*, 507 U.S. at 395).

28 Applying the *Pioneer* factors here, the Court finds it is appropriate to exercise its discretion and

1 allow Apple to file an untimely request for exclusion from the settlement classes. The Court finds that
2 there is very little danger of prejudice to the nonmoving parties. The parties assert that they may be
3 prejudiced if Epson exercises its “blow right” and withdraws from the settlement. However, there have
4 been a number of opt-outs from the settlement classes, and the Court is not persuaded that one additional
5 opt-out will have a meaningful effect on Epson’s decision to exercise its blow right. On the second
6 factor, the length of the delay was minimal, and Apple contacted the parties as soon as it learned of its
7 mistake in only requesting exclusion from the litigation classes and not the settlement classes. With
8 regard to the third and fourth factors, Apple’s counsel has submitted a declaration explaining that the
9 reason for the delay was her mistake, and there is no suggestion by any party that Apple has not acted
10 in good faith. On the whole, these factors weigh in favor of granting Apple’s motion.

11 Accordingly, the Court GRANTS Apple Inc.’s motion for an enlargement of time to request
12 exclusion from the settlement classes. (Docket No. 2397). Apple shall send the revised request for
13 exclusion, found at Docket No. 2397-2, to the class administrator promptly following the entry of this
14 order.

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16 **IT IS SO ORDERED.**

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18 Dated: February 18, 2011



19 SUSAN ILLSTON
20 United States District Judge
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